

We Saved The Fox



Joe Myers

© 2004 by Joe Myers. All rights reserved.

No part of this book may be reproduced, stored in a retrieval system, or transmitted by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the author.

ISBN: 1-4140-2246-8 (e-book)

ISBN: 1-4140-2245-X (Paperback)

ISBN: 1-4140-2244-1 (Dust Jacket)

This book is printed on acid-free paper.

THIS BOOK REPRESENTS THE VIEWS OF THE AUTHOR ONLY, AND DOES NOT PURPORT TO REPRESENT THE VIEWS OF ANY OTHER PERSON OR PARTY. THIS BOOK HAS NOT BEEN REVIEWED, SPONSORED OR ENDORSED IN ANY WAY BY ATLANTA LANDMARKS, INC., THE OWNER OF THE FOX THEATRE, AND DOES NOT PURPORT TO REPRESENT ITS VIEWS.

We Saved The Fox

(EXCERPT)

NB: Joe Myers was an attorney with Alston, Miller and Gaines.

In any event, Atlanta Landmarks, Inc. was riding the wave of public outrage to marshal its forces to try and save the building. In early 1975, while I was trying to figure out where my future lay, Jim Elliott, my real estate mentor in the firm, called to ask me if I would like to represent Atlanta Landmarks as its lawyer in ongoing negotiations with Southern Bell. Apparently, Bob Foreman, a fellow real estate attorney, who was then with Jones, Bird & Howell, which later merged with our firm to form Alston & Bird, had a conflict of interest and could not represent the company. Bob was a long time Fox admirer and a friend of Joe Patten, who now carries the label as "Mr. Fox". Normally, Bob would have been their lawyer, but his firm represented Fred Storey of Georgia State Theatres, Inc., one of the three shareholders of Mosque, Inc., the owner and proposed seller of the building. Since Bob was out, he called Jim Elliot for a suggestion and it came to me. Did I want the job? You bet. I said yes immediately. I was aware, of course, that this was not the best path to partnership, because it was very uncertain that we would ever be paid one penny and no one, including me, dreamed that this matter would take most of my time for the next six months! Nevertheless, such opportunities are rare and not to be missed, even if they come with a cost.

I am forever grateful to Jim Elliot, who was my real estate colleague and partner for twenty-four years. Jim later became president of the State Bar of Georgia and now is a professor and dean at Emory Law School. I am also very grateful to Bob Foreman for many things, but foremost for his support of me as counsel for the Fox for twenty-six years. Bob and I have been vice presidents and members of the Executive Committee of the Board of Atlanta Landmarks, Inc. almost forever, and we have been partners and close friends since our firms merged in 1982. Bob is a former president of

the Atlanta Bar Association and until his retirement, was one of the best lawyers and most distinguished members of our Bar.⁷

Fee arrangements were yet to be discussed and the firm had not given its approval. Landmarks agreed to “pay” me at the rate of 75% of my normal hourly rate (which was a small fraction of my rate at retirement), payable however, only from closing proceeds if we were successful. I would say the odds at that time of ever receiving a penny in fees were no more than 10%, but the firm said yes anyway.⁸ I cannot tell you how grateful I am to the firm. Our firm has always had such a rich tradition of pro bono work, starting with Robert Alston, our founder in 1893, who was President of the Atlanta Bar, as was his brother Philip Alston. That tradition continued through the years with Philip Alston, Jr., Alex Gaines, Frank “Buster” Bird and so many others that names only could complete this book.

I was now ready to begin my work. Our group of Bill Rothchild and Bob Hill had long since disbanded, and I, reluctantly without them, but happily, proceeded.

⁷ I was privileged to present Bob with the coveted Pindar Award, given by the Real Estate Section of the State Bar of Georgia for his tireless service to the Bar and the community.

⁸In these days the practice of law was still a profession and not a business. Lawyers weren’t concerned about getting rich.

Chapter 13

The Mother of all Closings

As we approached the closing date, I was prepared, yet very nervous. Yes, we had contracts, but they were all subject to the closing documentation being approved by all parties, and these again were being heavily negotiated. While we expected no one to back out, you never know everyone else's agenda, and a real estate transaction is not closed until it is closed. The banks had hired Sutherland, Asbill & Brennan to represent them and their lawyers had started late and were pulling on a lot of chains to protect the interest of the banks. The negotiations between Sutherland and King & Spalding over the take-out were particularly intense, so I heard.

In any event, on June 25, 1975, at a simultaneous, day-long closing:

1. Atlanta Landmarks, represented by Alston, Miller & Gaines, closed its loan from Trust Company and the other banks, represented by the Sutherland firm.
2. Southern Bell, represented by the Kilpatrick firm, executed and delivered its interest guarantee to the banks
3. The shareholders of Mosque, Inc. represented collectively by King & Spalding signed their take-out obligation and delivered it to the banks. Each of the Mosque shareholders was also represented by its

individual attorneys. The “closing table” was growing larger.

4. Atlanta Landmarks used the bank loan to close each of its land options for the ten parcels of land.

5. Southern Bell bought the stock of Mosque, Inc. from its shareholders, collapsed the corporation, and became the owner of The Fox and the parking lots north and west of the building. (I am very glad that we did not stop the closing at this point.)

6. Southern Bell bought the remaining parcel in the block, the Abbey Restaurant, which later moved to Ponce de Leon Avenue.

7. Southern Bell transferred The Fox to Atlanta Landmarks.

8. Atlanta Landmarks transferred its land to Southern Bell.

9. Southern Bell joint ventured with MARTA for the subway station - one of the early retail/office mixed-use projects

10. Landmarks owns The Fox

11. Southern Bell owns the rest of the block including the corner of West Peachtree and Ponce de Leon where its office building would be later constructed.

The day-long closing was no where near as sequential as described above (as each document was signed, it was placed in escrow, contingent on everything else happening), and it bounced around from office to office during the day. Of course, we all worked downtown in those days and we were all within “spitting distance” of Five Points, so moving from office to office was a two minute walk.

In any event, we ended up that day where most closings end up - with the title company collecting the documents for recording and “marking the title binders” to insure each party’s ownership interest.

And this day, well into the evening, we ended up at Lawyer’s Title Insurance Company on Pryor Street. In those days, Lawyer’s Title was “the” title company, the only one that could really handle a deal this “large” and complex. And as we finished, and I sat back and relaxed for the first time that day, and, perhaps, for the first time in

four months, Pat Patterson, of the Sutherland firm, our adversary in some pretty hostile negotiations, sent a paper face down to me. I turned it over and it was a check for \$100 from Pat, a donation to The Fox. He said "Thanks for helping to save The Fox, this is your first contribution towards paying off this mortgage." Timing and thoughtfulness are so important in this world. Recently, Pat's partner, Jim Jordan wrote an article about professionalism and the need for more civility among lawyers. Pat was Jim's mentor in the firm at Sutherland.

And my mentor was Bob Foreman, Pat's contemporary, who would have been in my shoes but for his firm's representation of Fred Storey's company. Bob's love for The Fox, shared with his close friend Joe Patten, has been well evidenced in the 28 years since The Fox was acquired. I still have the framed photograph of The Fox which Bob gave me a week or so after the closing as a thank you for my efforts.